IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 23250 of 2007(P)

T.O.P.368/2007 of D.C. & SESSIONS COURT, ERNAKULAM

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PETITIONER:

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1. P.G.R NAIR, AGED 49 YEARS,
   S/O. M.K.G. NAIR,RESIDING AT 602,
   MUNDAKAL APARTMENTS
   STATUE JUNCTION.TRIPUNITHURA.

2. V.J.MATHEW, AGED 52 YEARS,
   S/O. V.J.JOB,RESIDING AT 60/33, LISSIE ROAD,
   ERNAKULAM,KOCHI -682 018.

BY ADV. SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.K.R.KRISHNA KUMAR

RESPONDENTS:

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1. RUBY MARGRETTE,
   W/O. P.J.JOSEPH, AGED 47 EYARS,
   PUTHENVELIYIL HOUSE, C.C.4/1287 C,
   KURUPLAVU ROAD, FORT COCHIN, KOCHI-1.

2. RAVI CHANDI AGED 55 YEARS,
   FATHERS NAME NOT KNOWN
   KALLUVETTAMKULATHIL,
   CC 48/1365, COCHIN-19.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.23250 OF 2007 P

Dated this the 31st July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the learned District Judge, Ernakulam in T.O.P 368/07. The prayer in the transfer O.P is to transfer O.S.549/06 pending before the Munsiff Court No.III to Munsiff Court No.IV for trial along with R.C.P.98 & 99/06. O.S.549/06 is a suit for injunction against the demolition of the staircase etc. R.C.P.98 & 99/06 are petitions for eviction filed under the provisions of the Rent Control Act. The suit is one for a mandatory injunction. This Court as early as in **Kunjali Hassan Kurup v. Abdul Sathr Sait** (1963 KLT 407) held that petition for eviction under the 1959 Act and small cause suit for arrears of rent cannot be tried jointly for the reason that the court of the Munsiff and the Rent Control Court are exercising two different jurisdiction and the Munsiff should not have "tried the small cause suit and the petition for eviction jointly." So, this decision makes it clear that the same person exercising two jurisdiction cannot be combined as one and tried together. Further, the subject matter of the rent control petitions are coming under Section 11 of the Rent Control Act whereas the suit is one for injunction where

the provisions of Section 11 would not come into play at all. Just because the suit is also filed for and against the same party it does not ipso facto lead to an inference that it has to be tried jointly. I find that the learned District Judge has applied his mind and dismissed the application for joint trial correctly. It does not call for any interference. Therefore writ petition is dismissed.

M.N.KRISHNAN
Judge

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